

# SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.164 Laborer/Trades	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

## Facts of Case

The firm is in the business of providing landscape and playground installation services. The worker was engaged as a general laborer. He received a 2014 and 2015 Form 1099-MISC for his services; he continued to provide his services in 2016 as well. There was no written agreement.

Only the worker mentioned being initially trained on site by other laborers. Both the firm and the worker agreed that the firm gave the worker his task assignments. Each party indicated that the other determined the methods by which the assignments were performed but both agreed that the firm would be contacted if any issues or problems arose. The firm noted that the worker was to take photos of the completed work and have the customer sign-off on the job. The firm noted that the worker set his own hourly schedule. The worker noted that he was paid hourly when in town, and that his work routine consisted of going to the firm's warehouse to pick up the truck, tools as well as the job assignment. Both parties agreed that he worked at various customer sites. There were no meetings. Both also agreed that the worker was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided the supplies, tools and a fuel card; the worker noted that firm also provided the truck and equipment. Both parties agreed that the worker was paid an hourly rate with the firm including a daily rate as well. Both agreed that the worker had no other economic risk. The customer paid the firm. The firm carried workers's compensation insurance on the worker. Both parties agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits with the worker adding that there were bonuses. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker's services were terminated.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker with instructions, even if just initially by another worker. The worker performed his services according to the firm's scheduled work hours and days. As it was the firm that bid the jobs, and supplied the equipment, it would be unreasonable to assume that the worker had complete control over when to work as it was the firm that had obligations to its customer. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. However, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The worker would need to adhere to the firm's schedule with its customer. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

In addition, the worker provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. It was the firm that had the investment in the business, equipment, tools and supplies. The worker simply received a set hourly rate and had no other economic risk. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. The worker provided labor for the firm's landscaping and playground installation services. His labor was not an indication of a separate business venture. His services instead were part of the necessary activities of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.